



# **A Guide to the NIMH Contracts Process**

## **PREFACE**

This handbook is a general guide to assist potential contractors not familiar with the National Institute of Mental Health (NIMH) acquisition program. It answers questions most frequently asked, e.g., how to learn of NIMH plans to award a contract, how to submit proposals, how proposals are evaluated, etc. It is not intended to replace the Federal Acquisition Regulation (FAR) or the terms of any particular contract. In addition to furnishing information on the initiation, award and administration of contracts sponsored by the NIMH, the handbook includes a discussion of the distinctions between acquisition and assistance.

The Contract Management Branch (CMB), Office of Resource Management, NIMH contracts for research requirements and for requirements that directly support research. CMB does not contract for Information Technology, Construction or other non-research requirements. CMB also does not award Simplified Acquisitions (under \$100,000). Thus, those type of acquisition procedures will not be discussed in this handbook.

The material in this handbook is subject to revision by statute, regulation, or through the decision-making processes. Accordingly, this handbook should be used only as a general reference guide and should not be considered all inclusive or authoritative. It is our expectation that the handbook will be revised periodically to meet developing needs. Within these limits, it is hoped that the handbook will prove beneficial to the reader. We welcome suggestions for improvement of the NIMH contracting program and hope that all NIMH contractors or potential contractors will not hesitate to communicate with us. Readers should also note that a WEB Home Page for the NIMH Contracts Management Branch is accessible through the NIMH Home Page (<http://www.nimh.nih.gov/grants/indexcon.cfm>).

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## **PART I**

### **GENERAL INFORMATION ABOUT THE NIMH CONTRACTING PROCESS**

The NIMH is the principal mental health research component of the Department of Health and Human Services (DHHS), National Institutes of Health (NIH). Its mission is to uncover knowledge that will lead to better mental health for all Americans. The NIMH accomplishes this mission by supporting and conducting both basic and applied behavioral and biomedical research in its own facilities. In addition, the agency supports or acquires scientific investigations and developmental efforts performed by other organizations through acquisition (contracts) and assistance (grants and cooperative agreements) relationships.

#### **1. Distinctions Between Contracts as Acquisition Instruments, and Grants and Cooperative Agreements as Assistance Instruments**

There are fundamental distinctions between a contract and a grant or cooperative agreement. A contract is a legal instrument that is used to reflect a relationship between the Federal Government and a contractor whenever the principal purpose of the transaction is to acquire goods or services for the direct benefit or use of the Government. In competitive situations, the Government states the work to be undertaken or the problem to be solved in Request for Proposals (RFPs), or a sealed bid Invitation For Bids (IFBs). Offerors compete for a common requirement open to all interested parties. Proposals are evaluated using technical and business evaluation criteria and generally involve negotiations. Award is made to the offeror who submits the best proposal, considering all applicable technical, cost and past performance issues.

Unsolicited proposals to perform original, unique, and innovative concepts, and Sole Source requirements are exceptions to competitive solicitations initiated by the Government and are described in Part II, Section 8.

Grants and cooperative agreements are financial assistance mechanisms whereby money and/or direct assistance is provided to carry out approved activities. A grant is used whenever the awarding office anticipates no substantial programmatic involvement with the recipient during performance of the financially assisted activities. A cooperative agreement would be used when substantial Federal programmatic involvement with the recipient is anticipated during performance.

#### **2. NIMH Contract-Awarding Organization**

CMB, contracts range from complex biomedical R&D requirements, such as clinical trials, to a variety of requirements that support research, such as research conference support. This broad range of acquisition provides the necessary support for the NIMH to carry out its mission. The responsibility for negotiating, awarding and administering these acquisitions lies with the NIMH contracting staff.

### **3. The Role of the Contracting Officer**

Each contract is negotiated and administered by an authorized NIMH Contracting Officer. An officially appointed Contracting Officer is the exclusive agent of the Government and is the only person empowered to execute or modify a contract on behalf of NIMH. Contracting Officers may act through their authorized representatives, generally referred to as Contract Specialists, in other matters that do not involve the actual execution of contract instruments.

### **4. The Role of the Government Project Officer**

A Government Project Officer experienced in the scientific and technical disciplines addressed in a particular program or project is appointed for each awarded contract. The Project Officer is responsible for monitoring the technical aspects of the project and assisting the Contracting Officer in the administration of financial and other business aspects of a contract. The Project Officer is NIMH's primary contact with the Contractor's Program Manager. The Project Officer monitors the contractor's technical progress and assists in the resolution of technical problems encountered during performance.

### **5. Regulations Governing Contracting**

All NIH contracts are governed by the Federal Acquisition Regulation and the Health and Human Services Acquisition Regulations. The FAR (<http://www.arnet.gov/far/>) contains regulations and prescribed contracting policies and procedures that must be followed by all agencies of the Government in the solicitation, selection, negotiation, award and administration of their contracts. The HHSAR (<http://www.hhs.gov/ogam/oam/procurement/hhsar.html>) was developed to implement and supplement the FAR, providing DHHS-wide policies, procedures and guidance that govern the acquisition process.

Other useful links appear on the CMB HomePage <http://www.nimh.nih.gov/grants/indexcon.cfm>

### **6. NIMH Contracting Policies**

Within the limits of statutes and regulations governing the contracting process in Federal Agencies, there is an opportunity for innovation to improve contracting procedures and relations between the contracting parties. Views from the community at large on ways and means of enhancing the quality and effectiveness of our contracting programs and procedures are welcomed and encouraged.

## **PART II**

### **THE CONTRACTING PROCESS**

#### **1. Methods of Contracting**

There are two basic methods of contracting utilized throughout the Government; sealed bidding and negotiation. Since negotiation is a more suitable method of procuring R&D and other

services, NIMH requirements for R&D employs the negotiated method of contracting. Negotiation is a procedure that includes the receipt of proposals from offerors, permits discussion, and usually affords offerors an opportunity to revise their offers before award of a contract. This method provides the contracting parties maximum flexibility to refine the contract Statement of Work, and to establish and agree on anticipated costs of performance.

## **2. Flexibility of NIMH Contracts**

The terms and conditions of the NIMH negotiated contracts are designed to be flexible enough to meet changing requirements as work progresses. The contract instrument itself provides the mechanisms for the Contracting Officer and the Contractor to agree to changes in the Statement of Work, expansion or reduction of work requirements within the general scope of the contract, and if the contract is one that is a cost-reimbursement type, adjustment of funding levels during the life of the contractual agreement.

Many NIMH R&D contract programs are announced to the scientific community by stating the research requirements in rather general terms. By stating the requirement in a broad manner, the Government allows offerors to propose innovative solutions to the technical problems identified by the NIMH.

## **3. Contract Performance Periods**

The length of a contract will vary depending upon the requirement, typically several years for complex research contracts. Funding is normally provided on an annual basis.

## **4. Competition for Contracts**

The NIMH solicits contract proposals on a competitive basis to the maximum practicable extent. Depending upon the nature of the requirement, the NIMH encourages competition among qualified educational institutions, nonprofit and commercial organizations, which include small, small disadvantaged and women-owned business firms.

## **5. Requests for Proposals**

RFPs issued by the NIMH contracting activities contain all information necessary for offerors to prepare a proposal, and follow the uniform contract format established by the FAR.

The solicitation provides: (1) the statement of required work; (2) desired performance or delivery schedule; (3) available Government-furnished property, if any; (4) applicable contract clauses to be included in the contract as awarded, and if appropriate; (5) criteria that will be used by the Government to evaluate the proposals that are submitted. An RFP also includes guidance to prospective offerors on how to prepare the technical and cost portions of their proposals.

RFPs always specify the required date for submission of proposals, permitting offerors sufficient time to prepare and submit responses. All proposals must be mailed or delivered in a manner to ensure timely receipt by NIMH at the exact location and on or before the deadline specified in

the RFP. The NIMH is not authorized to consider late proposals or late modifications to proposals, unless the proposal receipt was delayed due to one of the regulatory exemptions stated in FAR 14.304-1 and FAR 15.412, or all of the requisite conditions exist to use the alternate late proposal procedure authorized by HHSAR 352.215-70.

Statements of Work in the NIMH contract solicitations are designed so offerors will clearly understand the requirement while having reasonable discretion to provide their own approaches to the contract objectives. Because offerors may propose various approaches in connection with a Statement of Work, a uniform standard is used to evaluate the differing approaches to the requirement. This standard is embodied in the evaluation criteria described in the RFP. NIMH RFPs are available to all sources that access the NIMH Website or are known to be interested in performing a proposed requirement.

## **6. Publicizing Contract Requirements**

Federal Business Opportunities (FedBizOpps; <http://www.fedbizopps.gov/>) is the principal publication through which prospective sources learn of planned NIMH contract projects. Generally, all NIMH solicitations are announced in FedBizOpps. It is the NIMH policy to seek competition in its contract programs to the greatest extent possible. Noncompetitive contracts are awarded on an exception basis only. Announcing competitive solicitations in FedBizOpps provides a wide distribution of the NIMH requirements to interested parties and potential contractors who may submit proposals in response to announcements of the RFP availability.

In addition to announcing proposed contract projects in FedBizOpps, the NIMH also uses the *NIH Guide for Grants and Contracts* (Guide) for its R&D requirements. The Guide contains policy guidance and administrative information concerning the NIH programs as well as the RFP announcements. Requests to be placed on a mailing list to receive copies of the Guide may be addressed to the Office of Extramural Outreach and Information Resources, NIH, 6701 Rockledge Drive MSC 7910, Bethesda, Maryland 20892-7910, Telephone (301) 496-5366, FAX (301) 480-8443.

As a third method of announcing and making RFPs available to the public, the NIMH has established a web site which may be accessed at <http://www.nimh.nih.gov/grants/indexcon.cfm>. All of the RFPs announced electronically may be downloaded directly to your personal computer.

## **7. Evaluation and Negotiation of Proposals**

Proposals received in response to the RFP are evaluated by the NIMH from a technical point of view, which includes the offerors past performance on similar projects, and from the standpoint of cost. The relative importance of the technical aspects of the proposal versus the cost or price, as well as how past performance is to be treated, is specified in each RFP.

### **a. Technical Evaluation of Proposals and Establishing a Competitive Range**

Every proposal received by NIMH will be evaluated professionally and objectively by persons who have expertise in that particular field. For R&D and R&D support

requirements, the technical evaluation is conducted by a panel in the scientific or technical disciplines associated with the contract requirements. At least three-fourths of the members of the review group must be non-Federal Government employees. For non-R&D requirements, persons within the Federal Government who have expertise in that particular field serve on a committee to evaluate proposals. All technical evaluations are conducted solely on the basis of the evaluation criteria announced in the RFP.

After the technical evaluation, the Contracting Officer will establish a competitive range. The competitive range identifies those offerors with whom NIMH will conduct negotiations, and is composed of those acceptable proposals, which have a reasonable chance of being selected for award.

**b. Cost and Price Analysis of Proposals**

Technically acceptable proposals are also evaluated from a business standpoint to determine if they should be included in the competitive range. When a cost reimbursable proposal is received, a cost analysis is performed. This analysis involves the review of the individual cost elements and proposed profit, if any, and any other information available to the Government official(s) who review the proposal. This analysis can also be accomplished through the use of an audit or technical analysis performed by the various Government specialists.

When a fixed priced proposal is received (or a cost reimbursable proposal with fixed priced components), a price analysis is performed to examine and evaluate a proposed price without evaluating its separate cost elements and proposed profit. Price analysis entails: (1) comparison of proposed prices received in response to the solicitation; (2) comparison of prior proposed prices and contract prices with current proposed prices for the same or similar items; (3) application of rough yardsticks to highlight significant inconsistencies that warrant additional pricing inquiry; (4) comparison with competitive published price lists; (5) published market prices of commodities; (6) similar indexes and discount or rebate arrangements; and (7) comparison of proposed prices with the independent Government cost estimate, and comparison of proposed prices with prices for the same or similar items obtained through market research.

**c. Negotiations**

Once a competitive range has been established, negotiations are undertaken by the NIMH Contracting Officer with the offerors determined to be in that "range." Negotiations are conducted either in writing or in person. Negotiations are designed to reveal to each offeror the ambiguities, uncertainties, or any questions raised by the evaluation of their proposal, and concerns about proposed costs and other administrative issues. Offerors are then given an opportunity to respond to technical questions and ultimately submit a Final Proposal Revision (FPR) by a specified date. This FPR is the basis for the final contract award to the offeror deemed most advantageous to the Government. In special situations and if so specified in the RFP, the Government may award a contract on the basis of initial offers received, without discussions. Therefore, the initial proposal should contain the offeror's best terms from a cost or price and technical standpoint.

d. **Award**

Following the completion of Negotiations, the program office that initiated the requirement will recommend an offeror to receive the contract(s). If that award is supported by the proposal, the technical evaluation, and negotiations, the contract will be prepared and sent to the successful offeror for signature. The contract will be effective once it is returned to CMB, and signed by the Contract Officer.

e. **Award Announcements/Notifications to Unsuccessful Offerors**

Notices of contract award are published in FedBizOpps. Upon written request, unsuccessful offerors are debriefed and furnished the basis for the selection decision and contract award. Debriefing information includes the Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal; the overall evaluated cost or price and technical rating of the successful offeror and the debriefed offeror; the overall ranking of all offerors; a summary of the rationale for award; and reasonable responses to relevant questions regarding the agency's compliance with source selection procedures contained in the solicitation and compliance with acquisition rules and regulations. The Contracting Officer will notify, in writing, each unsuccessful offeror at the earliest practicable time that their proposal is no longer eligible for award.

### **PART III**

#### **OTHER ISSUES RELATED TO NIMH CONTRACTS**

##### **1. Unsolicited Proposals**

In addition to contract projects, which are planned and developed by the NIMH, unsolicited proposals can also be the basis for establishment of requirements to be obtained by the contract. An unsolicited proposal is a voluntary written offer by a source outside the Government of new ideas and concepts that the NIMH may find meritorious and useful in furtherance of its mission. A valid unsolicited proposal must be innovative and unique; independently originated and developed by the offeror; prepared without Government involvement; and include sufficient detail to permit a determination that Government funding could be worthwhile and the proposed work could benefit NIMH's mission. Based on these criteria, an evaluation of the proposal will be conducted in a similar manner to how proposals received in response to an RFP are reviewed.

An unsolicited proposal may be the basis for a Government competitive solicitation, that does not reveal the original ideas or approaches of the originator. For example, an unsolicited proposal may represent one possible approach to a common problem; if there are other possible approaches to the problem, it may be in the Government's best interest to issue a competitive solicitation asking for technical approaches that offer the best solution to the problem. The competitive RFP would not specify or reveal the techniques described by the originator of any unsolicited proposal. When competition is deemed appropriate, notwithstanding the submission of an unsolicited proposal, the originator will be invited to participate under the formal competitive RFP.

## **2. Small Business Program**

The Small Business Act of 1958, as amended, and the Small Business Investment Act of 1958 reflects the declared policy of the Congress that small business concerns should receive a fair proportion of the Federal Government's contracts and purchases. It is the policy of the Federal Government to provide maximum practicable opportunities in its prime contracts and subcontracts to small, small disadvantaged and women-owned businesses. The DHHS and all of its Operating Divisions implement this Federal socioeconomic policy through an established Small and Disadvantaged Business Utilization Program. Each DHHS Operating Division, including the NIH, has a small business operational program at the activity intended to aid, counsel and assist small business. The Small Business Program at the NIH is headed by the Chief, Small Business Program. Information about this program is available at: <http://sbo.od.nih.gov/>

A small business set-aside is a mechanism by which an acquisitions reserved for the exclusive participation of small business concerns. Small business set-asides are initiated by program officials and Contracting Officers or recommended by the small business specialist when there is a reasonable expectation of receiving at least two offers from responsible small business concerns, which are capable of providing the products of small business concerns, and setting aside the contract will result in the Government receiving a fair market price.

Public Law 95-507 requires that every contractor awarded contracts exceeding the simplified acquisition threshold must agree to subcontract with small, small disadvantaged, and women-owned businesses to the maximum extent practicable. Each contract with "other than a small business" anticipating subcontracting opportunities and which is expected to exceed \$500,000, or \$1,000,000 for construction, must have an approved subcontracting plan for the particular contract prior to award. The goals established for small, small disadvantaged and women-owned businesses must reflect a "good faith" effort to provide maximum practicable subcontract opportunities.

## **3. Contract Compliance Program**

In accordance with the Civil Rights Act of 1964, the NIH Contract Compliance Program ensures that all NIH contractors are in compliance with Title VII of the Civil Rights Act of 1964, as amended: Executive Order 11246, as amended (FAR Subpart 22.8); Executive Order 12086, as amended (FAR Subpart 55.222-25); Section 503 of the Rehabilitation Act of 1973 (FAR Subpart 22.14); Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (FAR Subpart 22.13); the Age Discrimination Act of 1975 (FAR Subpart 22.9); and the Equal Pay Act of 1963 (Public Law 88-388, 29 U.S.C. 206(d)).

The goals of the Contract Compliance Program are to: (1) make contractors aware of Equal Employment Opportunity Compliance; (2) provide technical assistance and staff education; (3) monitor and collect data related to compliance activities; (4) assure that all contractors that do business with the NIH practice the policy of nondiscrimination in employment; (5) investigate employees' alleged discrimination complaints involving contractors; and (6) ensure that



affirmative measures are taken to provide opportunities for women and minority-owned firms to compete for contracts.

#### **4. The Small Business Innovation Research (SBIR) Program**

Public Law 97-219, the Small Business Innovation Development Act, amended by Public Law 102-564, dated October 28, 1992, provides that the DHHS and certain other Federal Agencies set aside a specified amount of their overall extramural R&D budgets for the SBIR Program. The purpose of this legislation is to stimulate technological innovation, encourage small business participation in Federal R&D, and increase small business commercialization of technological innovations derived from federally funded R&D.

A "small business" is a concern that is organized for profit, has its principal place of business in the United States, is not dominant in its field, and has no more than 500 employees. The SBIR projects are selected with a view to fulfilling broad program directives and solving priority technological problems and producing technology or products with commercial applications. Because these projects are usually highly scientific in nature, the SBIR contract proposals are reviewed by a panel of scientists, at least three-fourths of whom must be non-Federal Government employees, who are experts in the scientific field identified with the SBIR topic area.

NIH normally issues an annual Contract SBIR Announcement in early August. This announcement can be accessed at: <http://grants.nih.gov/grants/funding/sbir.htm>

#### **5. Other Issues that Impact the Contract Process**

- a. Clearances: Clinical Exemption, Privacy Act, Human Subjects Training, DSMB/IRB
- b. Property
- c. Invoicing
- d. Progress Reports
- e. Conflicts of Interest
- f. Subcontracting
- g. Performance Assessments
- h. Termination for Convenience/Default
- i. Close-out